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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
Before The
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Periodicals Classification Change

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Docket No. MC99-3

OFFICE OF THE CONSUMER ADVOCATE
RESPONSE TO MOTION OF UNITED STATES POSTAL SERVICE
FOR EXPEDITION AND TO FOREGO HEARINGS AS
PROVIDED FOR IN P.O. RULING NO. MC99-3/1
(May 7, 1999)

The Office of the Consumer Advocate (OCA), pursuant to P.O. Ruling No. MC99-3/1,¹ and section 21(b) of the Rules of Practice of the Postal Rate Commission (Commission), hereby responds to the motion of the United States Postal Service for expedition and to forego hearings, made orally at the May 3, 1999, prehearing conference (Tr. 1/15-17). OCA will also comment on the Response by the National Federation of Nonprofits² (NFN) to the Postal Service's oral motion.

Description of the Disagreement Between the Postal Service and NFN

The relief that NFN seeks is twofold: 1) it hopes to establish that the Postal Service decision to make refunds available beginning April 9, 1999, is "arbitrary,

¹ "Ruling on Postal Service Motion for Expedition and to Forego Hearings," issued May 3, 1999.

² "Response of the National Federation of Nonprofits to Commission Ruling on Postal Service Motion for Expedition and to Forego Hearings (Presiding Officer's Ruling No. MC99-3/1)," filed May 5, 1999.

capricious, [and] unfair . . . ;"³ and 2) it "seeks to demonstrate . . . that the rates in question are not an 'anomaly' but an error," since they "contravene long-established and stated Congressional policy (that Nonprofit rates should be lower than Regular rates)"⁴

In support of its request for a hearing on the issue of the appropriate starting date for refunds, NFN implies that the Postal Service was dilatory in filing the instant proceeding to address the anomaly—it is evidently significant to NFN that the Elks Magazine notified the Postal Service of the anomaly on February 4, 1999, but that the Postal Service did not make a formal filing until April 9. Other dates are cited as more equitable triggers for refunds, i.e., January 10, when the rates first became effective; February 4, as described above; February 24, the date that John McHugh, Chairman, Subcommittee on the Postal Service, asked the Commission and the Postal Service to review the situation and report on a possible solution; March 10, the date that Chairman Gleiman, Postal Rate Commission, and Chairman Dyhrkopp, Chairman, Postal Service Board of Governors, replied to Chairman McHugh by letter, stating their intention to address the anomaly; or March 30, the date that interested parties met with the Postal Service to forge a solution.

³ *Id.* at 3. The Coalition of Religious Press Associations (CRPA) concurs in this position. CRPA Notice of Intervention and Motion for Late Acceptance, filed May 3, 1999.

⁴ *Id.* at 2. In an earlier intervention the Alliance of Nonprofit Mailers (ANM) argued that "Allowing nonprofit mailers to pay rates no higher than commercial rates does not achieve the legislative policy of maintaining lower rates for nonprofit mailers." Notice of Intervention of ANM, filed April 28, 1999, at 1. However, ANM recognized that "a permanent and complete solution will require more fundamental reform of the rate structure, and a more extensive record, than is possible on short notice. Accordingly, ANM supports the temporary fix proposed by the Postal Service in this docket, and does not request a hearing on the proposal." *Id.* at 2. When CRPA filed its Notice of Intervention (and Motion for Late Acceptance), it

To bolster its position, NFN states that the Postal Service accepted a mailing of a nonprofit periodical within the period January 10–April 8 at the lower Regular rates, rather than at the higher nonprofit rates applied to other nonprofit periodicals.

OCA does not share NFN's and CRPA's views on the appropriate starting date for refunds. First, OCA believes that the Postal Service acted with commendable alacrity in bringing this matter formally before the Commission. The two-month period, beginning February 4, when the matter was first brought to the attention of the Postal Service, and ending April 9, the date that Docket No. MC99-3 was filed, is a reasonable period of time to prepare such a filing, particularly since the Postal Service sought input from affected mailers. Furthermore, since the Commission evidently adheres to the view that it does not have the authority to order a postage refund,⁵ there seems to be no legitimate purpose in hearing evidence that is concerned with enlarging the refund that is proposed by the Postal Service. Logic compels the conclusion that if the Commission has no authority to order the Postal Service to make *any* refund, it likewise lacks the authority to order the Postal Service to pay a *larger* refund than it has determined to be prudent and equitable.

NFN does allege an instance of special privileges accorded a single nonprofit mailer "with the full knowledge and consent of the Postal Service;"⁶ i.e., that the unnamed nonprofit mailer was permitted to pay lower Regular rates, while other

expressly raised the issue of the legislative policy concerning the inequality of commercial and nonprofit rates and requested a hearing on the matter. *Id.* at 2.

⁵ Order No. 1227, "Order Dismissing Complaint," Docket No. C98-1, issued January 27, 1999, at 8; see also remarks of Chairman Gleiman at Docket No. MC99-3 prehearing conference. Tr. 1/13-14

⁶ NFN Response at 3.

nonprofit mailers continued to pay the higher nonprofit rates on their mailings. However, no specific facts have been proffered. More importantly, NFN has not alleged an agency-wide, intentional policy to discriminate against one group of Nonprofit publications in favor of another. The probable explanation for the advantageous treatment given a single mailer (if true) is that this mailer had knowledge that regular rates were lower than Nonprofit rates for its high-editorial, finely presorted publication, while other mailers may not have been aware of the anomaly. The cited instance of exceptional treatment, even if true, does not rise to the level of an institutional policy deliberately offering special advantages to one mailer and excluding others.

NFN also seeks the presentation of evidence by the Postal Service on "the relative costs of processing and delivering Nonprofit and Classroom Periodicals, as compared to Regular rate Periodicals."⁷ The purpose of such evidence would be to corroborate NFN's belief that "Nonprofit periodicals are less costly to process and deliver than are Regular rate Periodicals"⁸ Furthermore, NFN asserts that Congressional policy is that "Nonprofit rates should be lower than regular rates" NFN makes this assertion unconditionally, implying that this would hold true even in cases when Nonprofit costs are higher than those of regular rate periodicals.

OCA's position on the proper construction of the Revenue Foregone Reform Act (RFRA) in Docket No. R97-1, as applied to Library Rate mail (also a low-volume, preferred subclass), was, in many respects, similar to that articulated by NFN in the

⁷ NFN Response at 2.

⁸ *Ibid.*

instant proceeding. OCA submitted the testimony of witness Collins, OCA-T-700,⁹ in which she testified that having Library Rate mail pay the same rates as its non-preferred partner subclass, Special Rate, creates a "*de facto* merger of the two subclasses."¹⁰ Equally troubling was that Library Rate pieces would pay the same cost coverage as Special Rate, "which is twice the level specified by RFRA for Library Rate mail."¹¹

The source of the concern in Docket No. R97-1 was the instability of Library Rate costs due to the unsuitability of the In-Office Cost System (IOCS) to estimate accurately the mail processing costs of a very small subclass like Library Rate mail.¹² Similarly, the inability of the Transportation Cost System (TRACS) to determine Library Rate mail's share of transportation costs with a high degree of confidence also contributed to the unreliability of the unit cost estimate for Library Rate mail.¹³ The coefficients of variance in TRACS for Library Rate mail are generally higher than for Special Rate.¹⁴ Witness Collins' solution was to use the reliable unit cost of Special Rate in place of the unreliable unit cost of Library Rate. She then applied one-half the cost coverage of the

⁹ Tr. 24/13082-13117.

¹⁰ *Id.* at 13094.

¹¹ *Id.* at 13091.

¹² Response of Postal Service witness Degen to Presiding Officer's Information Request No. 2, question 1, filed September 2, 1997 (Docket No. R97-1).

¹³ Postal Service witness Nieto testified in Docket No. R97-1 that "[l]ow volume in a particular subclass would result in increased variance in the distribution keys since it is likely that fewer movements and fewer containers sampled would contain Library Rate mail." Tr. 7/3359 (Response to interrogatory OCA/USPS-T12-50).

¹⁴ Tr. 7/3528-29.

Special Rate subclass to the Library Rate subclass to determine the rates of the latter, i.e., the cost coverage formula established by RFRA. The result of witness Collins' rate calculations were rates for Library Rate mail that were slightly lower than Special rates.

Like the cost relationship that existed in R97-1 between Library rate and Special rate, differences in costs between regular rate and Nonprofit periodicals are, to a large degree, responsible for the rate anomaly in the instant proceeding.¹⁵ The RFRA expectation that Nonprofit rates should be uniformly one-tenth of a cent below regular rates cannot be realized.¹⁶ In the face of this anomaly, the Postal Service's proposal in Docket No. MC99-3 closely mirrors the Commission's solution in Docket No. R97-1.

OCA is concerned that reliable costs be utilized to determine the rates for preferred and regular mail subclasses, and OCA sympathizes with NFN's desire to explore the costs of processing and delivering Nonprofit and Classroom periodicals. All factors considered, however, OCA finds itself in agreement with the stand taken by ANM. ANM recognizes that "a permanent and complete solution will require more fundamental reform of the rate structure, and a more extensive record, than is possible on short notice."¹⁷ ANM views the proposed classification as a "temporary fix" and does

¹⁵ Attachment to March 10 letter to Chairman McHugh.

¹⁶ *Id.*

¹⁷ ANM Notice of Intervention,

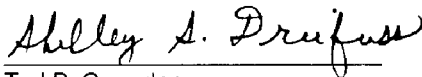
not seek a hearing. OCA agrees that a hearing is not appropriate in this limited case to address the anomaly faced by certain Nonprofit periodicals, but looks forward to the Postal Service developing and presenting reliable data on the cost of processing and delivering Nonprofit and Regular periodicals in the next omnibus rate proceeding.

OCA's Recommendation

For the reasons presented above, OCA supports the Postal Service's motion to proceed expeditiously and to forego hearings. OCA agrees with the Postal Service that no further evidence need be adduced for the instant record. OCA continues to be troubled about the unreliability of cost estimates for small subclasses such as Nonprofit periodicals and Classroom periodicals, and urges the Commission to require the Postal Service to develop a methodology prior to the filing of the next omnibus rate case that will yield accurate, reliable costs for low-volume subclasses, particularly the low-volume preferred subclasses.

Respectfully submitted,

OFFICE OF THE CONSUMER ADVOCATE

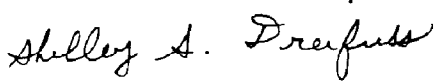
A handwritten signature in cursive script, reading "Shelley S. Dreifuss". The signature is written in dark ink and is positioned above a horizontal line.

Ted P. Gerarden
Director

Shelley S. Dreifuss
Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.


SHELLEY S. DREIFUSS
Attorney

Washington, D.C. 20268-0001
May 7, 1999